

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MACHELLE PEARSON, MARIA
SHELDON, and RACHELL
GARWOOD, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

HEIDI WASHINGTON, in her
individual and official capacity,
KENNETH MCKEE, in his individual
and official capacity, JEREMY
BUSH, in his individual and official
capacity, LIA GULICK, in her
individual and official capacity,
MARTI KAY SHERRY, in her
individual and official capacity,
CRAIG HUTCHINSON, in his
individual and official capacity,
SHAWN BREWER, in his individual
and official capacity, DAVID
JOHNSON, in his individual and
official capacity, KARRI
OSTERHOUT, in her individual and
official capacity, KRISTINA
FISHER, in her individual capacity,
CARMEN MCINTYRE, in her
individual and official capacity,
JAMES BLESSMAN, in his
individual and official capacity,
CORIZON HEALTH, INC., a
Delaware Corporation, and JEFFREY
BOMBER, in his individual and
official capacity, ROBERT LACY, in
his individual and official capacity,

Case No. 2:19-cv-10707 VAR-PTM

District Judge Victoria A. Roberts
Mag. Judge Patricia T. Morris

KEITH PAPENDICK, in his)	
individual and official capacity, and)	
RICKEY COLEMAN, in his)	
individual and official capacity,)	
)	
Defendants.)	
)	
REBECCA SMITH, on behalf of)	
herself and others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
HEIDI WASHINGTON, in her)	Case No. 2:19-cv-10771 VAR-EAS
individual capacity, SHAWN)	
BREWER, in his individual capacity,)	
and CORIZON HEALTH, INC., a)	District Judge Victoria A. Roberts
Delaware Corporation,)	Mag. Judge Elizabeth A. Strafford
)	
Defendants.)	
)	

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STIPULATED ORDER CLARIFYING CLAIMS

Plaintiffs Machelie Pearson, Maria Sheldon, Rachel Garwood, and Rebecca Smith, on behalf of themselves and their proposed class actions of similarly situated inmates (collectively “Plaintiffs”), and Defendants Heidi Washington, Shawn Brewer, Kenneth McKee, Jeremy Bush, Lia Gulick, David Johnson, Karri Osterhout, and Kristina Fisher, (the “MDOC Defendants”), by and through their above attorneys, hereby submit the following Stipulation to clarify the scope of Plaintiffs’ active claims.

WHEREAS:

1. Plaintiffs filed a consolidated master class action complaint on February 11, 2020 to consolidate this action and *Smith v. MDOC*, No. 2:19-cv-10771-SJM-MKM (E.D. Mich.), Compl., ECF No. 1. (ECF No. 69);

2. On April 20, 2020 the MDOC Defendants filed a motion to dismiss Plaintiffs’ master complaint on several grounds, (ECF Nos. 83, 86), and also separately moved for summary judgment, (ECF No. 85);

3. In response to the MDOC Defendants’ motion to dismiss, Plaintiffs in part made the following representations:

Under Count II of Plaintiffs’ Consolidated Complaint, Plaintiffs bring claims for gross negligence against, in part, Heidi Washington. Defendants argue that Washington is entitled to absolute immunity

from tort liability, and the gross negligence claims alleged against her specifically should be dismissed pursuant to Mich. Comp. Laws § 691.1407(5). **Plaintiffs agree to dismiss their negligence count against Defendant Washington only.** Notably, however, Defendant does not argue that any of Plaintiffs' federal claims are barred or that the negligence claim is inappropriate as to any other Defendant, limiting this concession to claims against Washington under Mich. Comp. Laws § 691.1407.

(Pls.' Resp. 21, ECF No. 93 (emphasis added).)

Under Count III of Plaintiffs' Consolidated Complaint, Plaintiffs bring claims for violations of their substantive Due Process rights under the 14th Amendment of the U.S. Constitution against the MDOC Defendants only. **Plaintiffs do not contest the MDOC Defendants' motion to dismiss this count.**

(*Id.* (emphasis added));

4. The Court granted the MDOC Defendants' motion to dismiss without prejudice, (ECF No. 112);

5. Plaintiffs filed their amended master complaint, (ECF No. 114), and the Court reopened the case, denying all Defendants' motions to strike, (ECF No. 131);

6. Plaintiffs and the MDOC Defendants met and conferred on April 13, 2021. Consistent with the statements made by Plaintiffs in responding to the MDOC Defendants' motion to dismiss, Plaintiffs agreed that they are not presently advancing negligence claims against Defendant Washington and that Plaintiffs are not seeking a standalone 14th Amendment cause of action against the MDOC Defendants; and

7. The MDOC Defendants also represented during the conferral that

Defendants Johnson and Fisher are no longer employees of the MDOC. Following the conferral, the Defendants represented that McKee is no longer an employee of the MDOC. Given this, Plaintiffs agree not to seek injunctive relief against Defendants Johnson, Fisher, and McKee in their official capacities.

THEREFORE, IT IS NOW STIPULATED:

a) Plaintiffs' amended consolidated master class action complaint shall not be interpreted to include a standalone 14th Amendment cause of action against the MDOC Defendants;

b) Plaintiffs agree to dismiss without prejudice their gross negligence claim against Defendant Washington; and

c) Plaintiffs agree to dismiss without prejudice claims against Defendants Johnson, Fisher, and McKee in their official capacities for injunctive relief.

This matter having come before the Court by way of agreement amongst the parties, and the Court being otherwise fully advised in the premises:

IT IS SO ORDERED.

Dated: April 26, 2021

s/ Victoria A. Roberts
HON. VICTORIA A. ROBERTS
U.S. District Court Judge

Stipulated and Approved for Entry:

Dated: April 26, 2021

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